IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.24 OF 2006

Mr.Kamal Babulal Bagan]
AGe 34 years, Occ: Service]
residing at Qts.No.207,]
Type II, R & D Colony,]
Alandi Road, Pune-4110015]..Appellant.

Vs.

Mrs.Vijaya Kamal Bagan]
Age 33 yrs. occ: Household]
Residing at C/o Mr.Jagannath]
Nivrutti Patil,]
17/7, Type-2, Rangehills,]
Khadki, Pune-411003]..Respondent.

....
Mr.Smita Kadu Advocate for Appellant
Mr.Rajesh More Advcoate for Respondent
....

CORAM: SMT. RANJANA DESAI AND
SMT.V.K.TAHILRAMANI,JJ.
DATE OF RESERVING
THE ORDER :07/09/2006
DATE OF PRONOUNCING
THE ORDER :20/09/2006

JUDGMENT: [PER SMT.V.K.TAHILRAMANI, J.]

1. The appellant-husband is the original petitioner in Petition A.No.411 of 2002 filed by him in the Family Court No.3 at Pune wherein he has inter alia prayed for a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The appellant is aggrieved by the judgment and

order dated 9th May, 2005 passed in the said petition. By the said judgment and order, the petition of the appellant came to be dismissed on the ground that the petitioner/appellant failed to examine his parents or any witness to prove the allegations made by him in his pleadings. The Family Court was of the opinion that the solitary testimony of the appellant could not be relied upon and hence, dismissed the petition.

2. Admitted facts are thus:

. The marriage of the appellant with the respondent took place on 30th May, 1998 as per Hindu Rites at Pune. Out of their wed-lock, they have got one son. After the marriage, the parties were residing at R & D Colony, Alandi Road, Pune. The parents of the appellant were also living with them.

3. It is the case of the appellant that the respondent was aggressive from the beginning. She was misbehaving with his parents. She was not doing any work in the house. She used to abuse in filthy language and she used to throw the articles

of the house. She used asked him to massage her. When the appellant got his salary, the respondent used to quarrel with him and snatch away his entire salary.

4. The respondent-wife used to sleep with the knife or scissor under her pillow and she used to tell the appellant that if he touched her, she would murder him. She used to threaten him to lodge complaint against him. As far as the above incidents are concerned, only general averments have been made by the appellant and no particulars regarding date and time etc. have been given. The appellant has narrated general incidents. The appellant has narrated only one specific incident which took place on 8th September, 2001. The appellant has stated that in his absence, the respondent-wife went to his house. She threw the articles in the house. She destroyed some articles and some utensils. She tore the clothes of the appellant and she abused in filthy language to the parents of the appellant who were present in the house and went away. It is the case of the appellant that at that time, he was not present in the house. This is the only incident which has

been specifically referred by the appellant. In support of his case, appellant has led his evidence on affidavit and he has been cross-examined. The appellant has not examined any other witness in support of his case in order to corroborate his averments. On the other hand, the respondent-wife has filed her affidavit in lieu of examination-in-chief. She has also submitted affidavit of her father i.e. Jagannath Nivrutti Patil vide Exhibit-79. The respondent-wife as well as her father have offered themselves for cross-examination on behalf of the appellant.

5. The respondent-wife has denied all the allegations made by the appellant. She on the other hand, has alleged cruelty, ill-treatment and harassment at the hands of the appellant and his parents to her. Her evidence is corroborated by the evidence of her father Jagannath Patil.

6. As stated earlier, the petition of the appellant came to be dismissed on the ground that the appellant has not examined any witness to prove his allegations. The learned Judge of the Family Court has placed reliance on the decision in the

case of **Smt.Deepika alias Bebi Vs. Naresh Chandra Singaria; A.I.R. 2000 Allahabad 148.** In the said case, it was alleged by the husband that the wife treated him with cruelty. However, the husband failed to produce the evidence of his parents, brother, sister, friends, relatives or any material witness to prove the allegations made by him in his pleadings. Hence, it was held that the solitary testimony of the husband cannot be relied upon in the absence of testimony of these material witnesses. In our view, in the facts of the present case, the learned Judge has rightly relied upon the said decision. In the present case, admittedly the respondent-wife and appellant were living along with his parents. Hence, his parents could easily have been examined to prove his case. We have already observed earlier that the appellant has stated in detail only about one incident which took place on 8th September, 2001. All the allegations except this one, are vague allegations without giving any particulars such as date and time etc. Admittedly, the said incident had occurred in the presence of his parents and in fact, the appellant was not present in the house at that time. During the said incident, the appellant

claims that respondent wife threw the articles in the house and destroyed some of the articles and utensils. She tore his clothes and she abused his parents in filthy language. This is the only incident regarding which the date and detailed particulars have been given. However, admittedly, the appellant was not present at home at that time and only his parents were present. In such case, it was imperative for the appellant to have examined his parents in respect of the said incident. In respect of all other incidents, only vague allegations have been made regarding which only the appellant has stated. He has not examined his parents who were residing with him to support his case. Admittedly, all incidents took place in the matrimonial home. Thus, in the facts of the present case, it was necessary for the appellant to have examined his parents in order to substantiate his case. In our view, the learned Judge was right and we find no fault with the findings of the learned Judge.

7. In view of the above, appeal stands dismissed.

[SMT.RANJANA DESAI, J.]

[SMT.V.K.TAHILRAMANI, J.]